

**IN THE UNITED STATES COURT OF APPEALS
FOR THE SIXTH CIRCUIT**

**M. Kathleen McKinney, Regional
Director of Region 15 of the National
Labor Relations Board, for and on
Behalf of the National Labor Relations
Board,**) **No. 15-5211**

Petitioner/Appellee,)

v.)

OZBURN-HESSEY LOGISTICS, LLC,)

Respondent/Appellant.)

**JOINT MOTION TO LIMIT THE SCOPE OF APPEAL AND AMEND
BRIEFING SCHEDULE**

Petitioner-Appellee M. Kathleen McKinney, Regional Director of Region 15 of the National Labor Relations Board, for an on behalf of the National Labor Relations Board (“the Board”), and Respondent-Appellant Ozburn-Hessey Logistics, LLC (“OHL”), jointly move to limit the scope of the appeal in this matter and amend the briefing schedule. As grounds, the parties respectfully submit the following:

1. On January 29, 2015, the U.S. District Court for the Western District of Tennessee issued injunctive relief pursuant to 29 U.S.C. § 160(j) against OHL in (McKinney v. Ozburn-Hessey Logistics, LLC, Case No. 14-cv-02445).

2. After filing a notice of appeal of the district court's order, OHL filed its opening brief (Dkt #13) in this Court on April 29, 2015.
3. On May 19, 2015, this Court held briefing in abeyance (Dkt #18) pending OHL's motion for an indicative ruling from the district court to modify the injunction.
4. On December 16, 2015, this Court remanded the case to the district court for further proceedings and held the appeal in abeyance (Dkt #21).
5. On January 5, 2016, the district court issued an amended order removing the following provisions from the original injunctive order: paragraphs 1(a), (b), (e), and (h); the names of Renal Dotson, Jerry Smith, Jr., Deangelo Walker, Nannette French, and Jerry Smith from paragraphs 2(b), and (c); and the name Jennifer Smith from paragraph 2(c). Thus, the sections of OHL's Opening Brief (pp. 6-17, 22-25, 26-31, 35-37, 38) relevant to these provisions are no longer part of this appeal.
6. In addition, because of changed circumstances since the district court amended the injunctive order, including the voluntary departure of some of the OHL employees who were reinstated pursuant to the injunction, the parties agree that the following provisions in the district court's Amended Injunction Order dated January 5, 2016 are now moot and no longer in dispute: paragraphs 1(a), (b), (c), (d), (e),

(f) and paragraphs 2(b) and (c) with respect to Shawn Wade, Reginald Ishmon, and Stacey Williams. These provisions correspond to OHL's Opening Brief pp. 17-19, 31-35, 37-38.

7. The parties further agree that the only provisions of the Amended Injunction Order that remain the subject of the instant appeal are: the reassignment of Jennifer Smith to auditing duties in the Browne Halco accounts (paragraphs 1(d) and 2(a)); the offer of reinstatement, and expungement of unlawful discipline, to Nathaniel Jones (in paragraphs 2(b) and (c)); and whether the District Court properly denied Appellant's Motion to Dismiss.
8. The Parties request that in light of the change in the scope of the appeal, and in light of intervening events and changed circumstances that have occurred since Appellant's Opening Brief in 2015, and in an effort to more squarely frame the issues for the Court, that Appellant should be permitted to file an Amended Opening Brief based on the narrowed scope of the appeal and that the Court's briefing schedule should be re-set accordingly. The parties propose that Appellant's Amended Opening Brief be filed no later than 30 days after the court's order, that Appellee's Brief be filed no later than 30 days after Appellant's Amended Opening Brief is filed, and that Appellant's Reply Brief be filed no later than 14 days after Appellee's Brief is filed.

For these reasons, the parties jointly request that the scope of the appeal be limited to the provisions of the Amended Injunction Order described above in paragraph 7 and that the briefing schedule be amended as described above in paragraph 8.

Respectfully submitted,

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Dated at Washington, DC
this 19th day of May, 2017

CERTIFICATE OF SERVICE

I hereby certify that on May 19, 2017, I electronically filed the foregoing with the Clerk of the Court for the United States Court of Appeals for the Sixth Circuit by using the appellate CM/ECF system.

I certify that all participants in the case are registered CM/ECF users and that service will be accomplished by the appellate CM/ECF system.

s/ Jessica Rutter
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Dated at Washington, DC
this 19th day of May, 2017